

## **REMARKS/ARGUMENTS**

### **Claim Rejections – 35 U.S.C. §102**

The Examiner rejected claims 5-6, 8-9 under §102(b) as being anticipated by DeMoore (5,979,322).

According to MPEP §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference, and the identical invention must be shown in as complete detail as contained in the . . . claim.

Claim 5 (claims 6, 8-9 depend from claim 5) includes the element of “a first elastic strip hemmed along said first lengthwise edge of said strip of fabric, and a second elastic strip hemmed along said second lengthwise edge of said strip of fabric, said first and second elastic strips together providing said strip of fabric with a gathered configuration.”

The Examiner argues that DeMoore shows this element “because [DeMoore’s] fabric is elastic as it is pre-stretched and it’s [sic] edges are interpreted to be elastic strips.” Applicant respectfully disagrees.

DeMoore doesn’t disclose an elastic fabric. The word “elastic” doesn’t even appear to occur in DeMoore. Just because something can be stretched does not make it elastic. For instance, one can stretch metal...that fact doesn’t make metal elastic. Applicant asks the Examiner to either support the rejection, or withdraw it.

Next, the Examiner argues that DeMoore shows “a lengthwise strip of fabric (68) having a rectangular structure (as shown in figure-4) area and as shown in figure-1...” However, that is not correct. Figure 1 shows no such structure. Figure 4 doesn’t even show DeMoore’s (68) structure. Applicant asks the Examiner to either support the rejection or withdraw it.

Claim 5 further includes the limitation that:

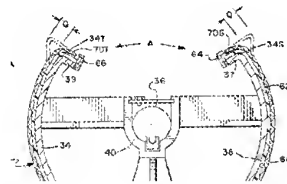
...a first elastic strip [is] hemmed along said first lengthwise edge of said strip of fabric, and a second elastic strip [is] hemmed along said second lengthwise edge of said strip of fabric, said first and second elastic strips together providing said strip of fabric with a gathered configuration...

The Examiner offers no structure shown in DeMoore showing this element. As such, the rejection should be withdrawn.

Additionally, DeMoore doesn't show gathering. In fact, it teaches away from such structure, noting (as the Examiner has argued) that its jacket is "pre-stretched." The Examiner seems to be arguing that the jacket is "pre-stretched" (to meet the elastic element) and "gathered" (to meet the gathered configuration element). The rejection should be withdrawn.

Finally, claim 5 includes these element(s):

...said pressure sensitive adhesive positioned and configured to allow said fastening side of said pressure sensitive adhesive to be selectively adhered to said lengthwise strip of fabric substantially along said second lengthwise edge so that said first and second lengthwise edges overlap one another and are aligned generally parallel to one another to thereby form a tubular configuration, configured to envelope said linear object...



(Figure 3 of DeMoore (partial))

The Applicant directs the Examiner to DeMoore's disclosure and figures. For instance, refer to the partial view of Figure 3 shown above.

DeMoore does not show the adhesive attaching the lengthwise edges together (an element of claim 5). The lengthwise edges are not attached to one another at all, let alone by the adhesive.

DeMoore does not show the formation of a tubular configuration (an element of claim 5).

DeMoore does not envelope the linear object (an element of claim 5).

DeMoore does not anticipate. The rejection should be withdrawn.

Because the independent claim (claim 5) is not anticipated, the claims that depend there-from are allowable as well.

### **Claim Rejections – 35 U.S.C. §103**

In his §103 rejection, the Examiner argues that DeMoore discloses every element of claims 1-3, 7, 20 other than the liner and that Blackburn teaches the liner.

[note: The Examiner previously cited Blackburn itself as anticipating the claims. Upon amendment and response by the Applicant, the Examiner withdrew those rejections.]

As Applicant has argued (*supra*), DeMoore does not anticipate claim 5, and those same arguments apply here, to the other two independent claims (claims 1 and 20). Blackburn does not supply the missing elements (which is consistent with the Examiner's withdrawal of the previous §102 rejection based upon Blackburn). Thus, the combination cannot possibly render the claims obvious and therefore Applicant does not need to argue the matter further. The §103 rejection should be withdrawn.

Claims 1 and 20, and the claims that depend there-from, are allowable.

### **Claim Rejections – 35 U.S.C. §112**

The Examiner rejected claims 1-3, 5-9 and 20 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner argues that:

*Claims 1, 5 and 20, as stated, is found to be vague as to the location of the (1) first and second widthwise strips with respect to each other and the lengthwise strips, (2) the location of the lengthwise strips with respect to each other and the two widthwise strips, (3) location of the elastic strip with respect to the interior and exterior side of the fabric, (4) location of the PSA strip with respect to the edges and the elastic strip.*

Applicant disagrees, and reminds the Examiner that the breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689 (CCPA 1971).

In this case, the scope of the subject matter embraced by the claims is clear and the Applicant has not otherwise indicated that she intends the invention to be of a scope different than that defined in the claims. As such, the claims comply with 35 U.S.C. 112, second paragraph. See MPEP 2173.04. The §112 Rejection should be withdrawn.

### **Conclusion**

If the Examiner feels it would advance the application to allowance or final rejection (appeal), the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application is respectfully requested.

DATED this 8<sup>th</sup> day of April, 2008.

Very respectfully,

/Stephen M. Nipper/

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### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that this correspondence is being transmitted to the United States Patent and Trademark Office via EFS-Web on the below date:

DATE: April 8, 2008

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